

Over 70 000 Suggestions and Proposals Focus on Six Key Issues in the Draft Social Insurance Law

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The General Office of the Standing Committee of the National People's Congress held a public consultation period on the draft of a new Social Insurance Law between 28 December 2008 and 15 February 2009. The Draft attracted a huge amount of attention, with over 70 000 suggestions and proposals submitted by the public. Despite the number of responses, six key issues emerged as a common focus of the submissions. This article provides an analysis of these key issues and provides some suggestions for improving the draft law.

Issue 1: Universal coverage and equal rights

In the Draft's current form, whether the principles of full coverage of the whole population and equal rights for equal work will be realized is questionable. The Draft should stipulate that all employers and employees have the obligation to pay social insurance premiums and that all employees shall enjoy the right of social insurance.

The Draft separates the urban social insurance system from the rural social insurance system, which may delay the realization of farmer's rights to social insurance and cause an unnecessary waste of legislative resources. Some doubt whether the Government's finance is sufficient to pay the social insurance premiums for farmers. For the migrant workers, many believe that the solution lies not in the current draft law but in the creation of a free transfer system and in national-level centralized planning of the social insurance system.

In addition, workers governed by The Civil Servant Law are not entitled to basic pensions, unemployment insurance, work-related injury insurance or maternity insurance, which is inconsistent with the principle of full coverage. However, some argue that it is unnecessary for the Law to cover civil servants, because their social insurance is already funded by government finance.

Issue 2: Transfer of social insurance premiums

How to transfer social insurance premiums is the source of much debate. It is well known that the current transfer system of social insurance denies the migrant worker the right to social insurance. The key to resolving this problem is to establish a transferable social insurance system as soon as possible. However, there is disagreement as to how to do this.

Some submissions argue that we should retain the current system, which permits partial transfer of social insurance premiums. Others argue that the premiums paid by the employer should be allowed to transfer together with the premiums paid by the employee. Still others support the system proposed in the Draft, in which the transfer mechanism is aimed at the insurance relationship and not the insurance premiums. Under this system, when an employee retires, their social insurance shall be calculated by social insurance agencies (where the premiums were paid based on different periods) and paid by the insurance agencies where the employee retires.

Maintaining the current system avoids significant problems and will trigger more and more migrant workers choosing to have their social insurance premiums refunded. The system stipulated in the Draft is reasonable, but measures should be taken to enable the free transfer of social insurance premiums between different regions and departments. Otherwise employees will have to deal with multiple agencies in order to obtain payment of social insurance. The basic way to resolve the problem is to elevate the level of overall planning to the provincial level so that the transfer of social insurance premiums for migrant workers within one province will not be a problem. Of course, the most effective resolution would be to establish a national-level centralized system.

Issue 3: Public trust in the social insurance system

Many of the submissions raised the critical question of how to obtain the trust of the public in the social insurance system. At present, the social insurance system is regulated by various rules and regulations and the social insurance premiums are collected by insurance agencies at different levels. Some of these regulations conflict or overlap and no thorough cooperation exists among the different insurance agencies. Furthermore, the investment of social insurance funds is highly risky. A lack of effective supervision, early warning and problem-solving systems add to the vulnerability of insurance funds and embezzlement and corruption are real problems.

It is the government's responsibility to provide social security. The department in charge of social insurance must bear this responsibility and conduct strict supervision over the use of social insurance funds. Although the liability of social insurance agencies is clear in the Draft, the liability of the department in charge of social insurance funds is not, which will to some extent alleviate the department's liability. In addition, unless the appraisal and management of social insurance fund investments and a selection process for the fund supervision board are clearly set out in the Law, stipulations about supervision and management will become mere scraps of paper.

Issue 4: The rate of social insurance premiums

What rate of social insurance premiums is reasonable? In general, the rate of social insurance premiums has decreased in recent years and many local governments are endeavoring to reduce the rate paid by employers in the context of the global financial crisis. Do the rate of social insurance premiums paid by employers and employees and the percentage of social insurance premiums paid by government finance conform to our current level of economic development?

There is no simple answer to this question, but a fact that we cannot ignore is that in some parts of China, if the employer tells the employee that he or she will not pay the premiums for the employee, the employee might agree. Migrant workers assess the payment of social insurance premiums as worthwhile or not based on their short-term interest. If long-term payment of social insurance premiums does not bring the interest that they had expected, they perceive the rate of social insurance premiums as too high.

More importantly, the mechanism of payment of social insurance premiums by government finance, the percentage of social insurance premiums paid by the central and local governments and the mode of fund management should also be set out in the Law so as to demonstrate the support of government.

Issue 5: Simplifying the payment of work-related injury insurance

The procedures of the current work-related injury insurance system are very complicated, which may result in unfair consequences. The injured employees, especially the uninsured employees, are not able to obtain timely payment. Often, an employee's injury will deteriorate while they are waiting for payment and some employees have even died in the process of obtaining work-related injury insurance. What is worse, some unethical enterprises which did not pay social insurance or which delayed payment of social insurance premiums may benefit from their illegitimate acts.

In view of these issues, the Law should abolish the current determination procedure for work-related injury claims of uninsured employees and stipulate: 'When a work-related injury occurs in a workplace in which the employer did not pay the social insurance premiums, the employee may claim the cost of treatment of the injury in accordance with the procedure for labor disputes against an employer, and the employer shall bear the burden of proof in the event that it denies a work-related injury'.

According to the Draft, if the employer fails to make timely payment of work-related injury insurance, the employee may petition for additional compensation of 100 to 500 per cent of the original claim. Such a provision can provide incentive for employees to defend their rights and can to some extent deter the employer's illegitimate acts. It is particularly important to ensure that a social insurance fund will advance payment of insurance when an uninsured employee suffers injury. The Law should prescribe: 'Where an uninsured employee is determined as having a work-related injury and the employer fails to make timely payment, the social insurance fund shall advance such payment'. Obviously, the more security the employees have, the easier it is to protect their rights.

Issue 6: Standardizing the payment of work-related injury insurance

Although work-related insurance has been in place for years, no standards have been set. Take work-related injury caused by a third person for example. There are currently two different modes of payment: the double compensation system used in Shandong Province, whereby the employees are entitled to the compensation paid by the insurance fund and to compensation paid by the third person who caused the injury; and the difference compensation system favored by Beijing and Shanghai, whereby the fund is liable for the amount exceeding the compensation paid by the third person where such compensation is not sufficient to cover all damages.

If the employer fails to perform its obligation to protect employee health and safety and that failure results in injury, there is some question as to whether the employee is entitled to claim compensation against the employer in accordance with the Civil Procedure Law. The judicial interpretations of the Supreme People's Court have actually frustrated the relevant provisions set out in the Production Safety Law and the Law on Prevention and Control of Occupational Diseases which entitle an employee to claim compensation in a civil action.

In order to resolve these problems, subrogation should be established in the Law in the case of injury caused by a third person, so that the employer and the insurance fund have the right of

subrogation against the third person after payment for treatment of the injury to the employee. In the interest of consistency among the different statutes, the Law could prescribe: 'Where the work-related injury was caused as a result of the employer's negligence, the employee, in addition to payment for the treatment of the injury in accordance with law, shall have the right to claim civil relief against the employer. The employer shall be liable for the amount exceeding the cost of the treatment of the injury'. These stipulations not only promote a standard of compensation payment for work-related injury, but also compel the employer to pay more attention to safety protection and thus may lead to a decrease in workplace accidents.